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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,823	12/03/2003	Brian J. Brozell	18039 USA	7485
27081 7590 10/16/2008 OWENS-ILLINOIS, INC. ONE MICHAEL OWENS WAY, THREE O-I PLAZA PERRYSBURG, OH 43551-2999				
EXAMINER				
SMALLEY, JAMES N				
ART UNIT		PAPER NUMBER		
3781				
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10/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/727,823

**Applicant(s)**

BROZELL ET AL.

**Examiner**

JAMES N. SMALLEY

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26, 28-35, 40-42, 48, 51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51 is/are allowed.
- 6) ☒ Claim(s) 26, 28-35, 40-42, 48 and 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the instant application, the abstract is objected to a being more than 150 words as required by 37 CFR 1.72(b).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26 and 28-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Specification fails to enable a mode whereby the closure only has one lug, thus rendering the limitation "at least one internal lug" in

line 7 as not being enabled by the disclosure. To the best degree the Examiner understands the claimed invention, the disclosure limits at least one pair of lugs, but not one lug.

In other words, Examiner is objecting to the use of the phrase "at least one" because no embodiment has been taught where invention can operate with just one lug. To the best degree the Examiner understands the claimed invention, a pair of lugs are required for proper function of the novel feature of the invention. It is suggested Applicant amend the claims to say "at least a pair of lugs" because this is the minimum structure that has been taught. By limiting "at least one lug", the Applicant is attempting to claim an embodiment with only one lug, and such an embodiment has not been enabled by the disclosure.

Examiner notes the Specification is replete with language which clearly states that the broadest embodiment disclosed has at least a pair of lugs. See for example page 7, line 1, which states "a plurality of stop lugs." Line 2 states "four separate stop lugs." Page 9, line 18 states "at least one pair of internal lugs" (emphasis added). Page 9, line 20 states "several pairs of internal lugs." While Examiner agrees that Applicant is entitled to claim the invention as broadly as possible, Applicant is not entitled to claim broader than the disclosed invention. In this case, the broadest embodiment disclosed has at least a pair of lugs.

***Claim Rejections – 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078.

Shah '858, in the embodiment of figures 7-8, teaches a container neck with a finish including a thread and a locking lug, and a closure having a thread, a locking lug, and an annular resilient spring element (10). The locking lug has a horizontal portion inbetween stop (20) and lug (15). Furthermore, the locking lug (14, 15, 20) is disposed on a step (13) which is radially outward of the neck finish on which the threads are disposed.

The reference teaches all the limitations substantially as claimed but fails to teach the closure locking lug having a sloping axially-oriented cam face.

Akers '078 teaches a child safety cap including corresponding locking lugs including a closure locking lug which has a sloping axially-oriented cam face, which engages a container locking lug in order to engage and close the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure locking lug of Shah '858, providing a sloping axially-oriented face to match the slope of the container locking lug, as taught to be known by Akers '078, motivated by the benefit of providing a smoother engagement between these sliding parts.

6. Claims 28-34, 40-41, 48, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078 as applied above to claim 26, and further in view of Swartzbaugh et al. US 4,399,920.

Shah '858, as applied above teaches all the limitations substantially as claimed, but fails to teach the closure comprising two lugs, which cooperate to prevent rotation of the closure in the opening direction.

Swartzbaugh '920 teaches closure lugs (36, 37) and container lugs (25) which prevent removal of the closure from the container. Examiner notes the structure functions essentially the same as that of Shah '858 in that it prevents rotation of the cap in the removal direction. The difference between the two is that the additional lug is provided on the closure, and the stop lug (20) of Shah '858 is removed. A net material savings could be obtained if the closure lug is formed smaller than the stop lug.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Swartzbaugh '920, providing two separate lugs on the closure in place of one, and removing the stop portion (20) of Shah '858 in order to accommodate the function of preventing rotation of the closure in the removal direction, motivated by the benefit of reducing the amount of material used.

7. Claims 35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078 and in view of Swartzbaugh et al. US 4,399,920 as applied above to claim 30 and further in view of Puresevic et al. US 4,523,688.

Shah '858, as applied above teaches all the limitations substantially as claimed, but fails to teach the closure biasing element being circumferentially segmented.

Puresevic '688 teaches between an annular biasing element in the embodiment of figures 1-8 and a segmented biasing element in figures 9-12. Though pointed inwardly, one of ordinary skill would recognize the benefits in material savings could be applied to any annular biasing element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the biasing element of Shah '858, forming it in segments as taught to be known by Puresevic '688, motivated by the benefit of reducing the volume of material needed in order to form the closure.

### ***Response to Arguments***

8. Applicant's arguments filed December 10, 2007, regarding the rejections of claims 26, 28 and 29 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, have been fully considered but they are not persuasive.

**Applicant argues that there is support in the Specification for "at least one lug."**

Examiner notes the Specification is replete with language which clearly states that the broadest embodiment disclosed has at least a pair of lugs. See for example page 7, line 1, which states "a plurality of stop lugs." Line 2 states "four separate stop lugs." Page 9, line 18 states "at least one pair of internal lugs" (emphasis added). Page 9, line 20 states "several pairs of internal lugs." While Examiner agrees that Applicant is

entitled to claim the invention as broadly as possible, Applicant is not entitled to claim broader than the disclosed invention. In this case, the broadest embodiment disclosed has at least a pair of lugs.

**Applicant argues Shah '858 fails to teach the closure skirt having a stepped profile, with the thread being disposed on a first portion, and the lug being disposed on a second portion which has a larger diameter than the first portion.**

Examiner notes Shah '858, figure 8, teaches the lug (11) being on a stepped portion having a larger diameter than an upper portion on which the thread is disposed.

**Applicant argues the combined prior art fails to teach an axially-oriented cam face.**

Examiner notes Shah '858 has a cam face (14), and Akers '078 teaches a lug with an axially oriented cam face, both of which are angled and thus have a component which faces in an axial direction.

#### ***Allowable Subject Matter***

9. Claim 51 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3781

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